

FILED

## IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

2009 APR 27 PM 4:07

FIRST CENTURY BANK and  
J. MICHAEL WINCHESTER,  
SUCCESSOR TRUSTEE,  
Plaintiffs,

HOWARD G. HOGAN

v.

Docket No. 162401-1

HALLS MEMORY GARDEN, INC.,  
ESTATE OF GEORGE W. FORTNER,  
BEVERLY A. REYNOLDS,  
SANDRA J. STRINGFELLOW,  
LESLIE NEWMAN, in her capacity as  
Commissioner of the Tennessee Department  
of Commerce & Insurance, LOREN L.  
CHUMLEY, in her capacity as  
Commissioner of the Tennessee Department  
of Revenue, JAMES NEELEY, in his  
capacity as Commissioner of the Tennessee  
Department of Labor and Workforce  
Development, and FRANKLIN CREDIT  
SERVICES, INC.,  
Defendants.

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**NOTICE OF FILING OF TRANSCRIPT OF PROCEEDINGS ON MARCH 11, 2009**

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**TO PARTIES AND THEIR ATTORNEYS OF RECORD IN THIS ACTION:**

Counsel for the Commissioner of the Tennessee Department of Commerce & Insurance hereby gives notice that the transcript of proceedings before the Court on March 11, 2009, has been filed with the Clerk and Master this 27<sup>th</sup> day of April, 2009.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 27, 2009, a true and exact copy of the foregoing notice of filing  
has been forwarded by electronic mail and by First Class U.S. mail, postage pre-paid, to:


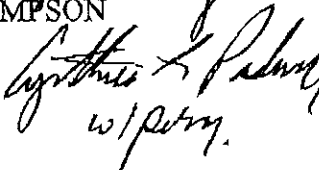
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A true and exact copy of pages 1 through 4 of the State of Tennessee's motion for revocation of the corporate charter of Halls Memory Garden, Inc., the sale of its assets, and the resolution of this case has also been forwarded by First Class U.S. mail, postage prepaid, to those lot owners and receivership claimants whose names and addresses have been provided to the State by the successor receiver, a listing of such individuals and their addresses being attached to the State's motion filed herewith and the entire motion and memorandum of law, with all supporting exhibits, has been posted on the Internet, along with an address and telephone number through which a copy of the entire pleading can be obtained upon request, on April 27, 2009, with additional notice to be given by publication in the Halls Shopper.

  
GARY R. THOMPSON  
  
w/ petry.

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FIRST CENTURY BANK and  
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No. 162401-1

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capacity as Commissioner of  
the Tennessee Department  
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Department of Revenue, JAMES  
NEELY, in his capacity as  
Commissioner of the Tennessee  
Department of Labor and Workforce  
Development, and FRANKLIN  
CREDIT SERVICES, INC.,

Defendants.

Before: Honorable John Weaver, Chancellor

TRANSCRIPT OF PROCEEDINGS

March 11, 2009

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8 RECEIVER:

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10 Hodges, Doughty & Carson, PLLC  
11 617 Main Street, P. O. Box 869  
12 Knoxville, Tennessee 37901-0869

13 REPRESENTING THE STATE OF TENNESSEE:

14 Joe Shirley, Esq., Assistant Attorney General  
15 Tennessee Attorney General  
16 Financial Division  
17 P. O. Box 20207  
18 Nashville, Tennessee 37202-0207

19 ALSO PRESENT:

20 Paula Flowers, Esq.  
21 Paula Flowers, PLLC  
22 112 Mockingbird Lane  
23 Oak Ridge, Tennessee 37830  
24  
25

1 (Proceedings began at 9:57 a.m.)

2 THE COURT: Okay. This is set today for  
3 another status conference.

4 Do we have an order from the last  
5 conference?

6 MR. FARMER: I don't believe so, your  
7 Honor. You just set it over.

8 THE COURT: Okay.

9 MR. FARMER: During the interim, what,  
10 potentially, was going to take place, and there were --  
11 I guess what took place was that there were further  
12 negotiations with an operator to potentially take over  
13 the cemetery. He had a deadline of February 29th, and  
14 he was contacted the first week of March and indicated  
15 that he was not interested and would not be submitting  
16 a bid.

17 In having received that response and  
18 communicated it with some of the lot owners and the  
19 group that's been active -- and the Attorney General's  
20 office is here to make a further report on this -- they  
21 have proceeded to establish a nonprofit corporation  
22 with the idea of setting the cemetery up as a community  
23 cemetery. And the timelines with which they think this  
24 can be accomplished, they need to discuss.

25 As I have mentioned to the Court,

1     there's a couple of housekeeping matters that I need to  
2     bring to the Court's attention, which I can do easily.  
3     I think there's like six owners that we're clarifying  
4     their relationship with, and we've got that resolved.  
5     But we're continuing to bury people. I think we've had  
6     maybe a half a dozen since the last hearing. It's  
7     working out well, to the extent that the lots are  
8     identified and they're as expected and as we have them  
9     listed.

10                 The issue that I think the State will  
11     also bring forth, which I had intended to do, but I  
12     think they want to include it in -- with respect to the  
13     transfer of the receivership property, concerns the  
14     issues of the de minimis merchandising trust and the  
15     fact that it really costs more to operate it than the  
16     returns being earned, and the transfer of that small  
17     amount of money over to the improvement care trust.

18                 I believe that the Court will hear that  
19     it is the intention of the community in the nonprofit  
20     community cemetery -- in the event that the Court will  
21     order to transfer property there -- that they do not  
22     intend to sell any merchandise. They only intend to  
23     operate the facility for the purposes of having lots  
24     available. There are some additional lots that it may  
25     be necessary to accommodate a family or sell something

1     regarding that, but I don't think they intend to engage  
2     in any other merchandising.

3                 THE COURT: Do we have any outstanding  
4     claims against the merchandise and services fund, or  
5     would that be covered by this victims' fund?

6                 MR. FARMER: There are claims against  
7     the merchandising fund, your Honor, but the  
8     preliminary -- because there was merchandise --  
9     caskets, monuments, and placards, mostly placards that  
10    were purchased -- but it far, far exceeds the money  
11    that is in the merchandising trust. The merchandising  
12    trust, and I'm sorry, I don't have it with me today,  
13    but my recollection is that it's under \$6,000, and the  
14    claims far, far exceed that.

15                It's just not -- there's no way to make  
16    any -- okay. It's \$3,390. It just far exceeds any  
17    reasonable administration of that amount of money,  
18    given the number of people that have claims. I mean,  
19    as I reviewed the claims, my recollection was that  
20    about every other claim had a merchandising feature to  
21    it. Of the claims that were filed, it's a huge number.

22                I think, in fact, the homeowners even  
23    at one point made a preliminary estimate of that. We  
24    do have the \$50,000, and I think there's an issue about  
25    how to administer that. We have discussed that before,



1 with respect to the Clerk and Master feeling like that  
2 that administration would be costly and would consume a  
3 substantial amount of those funds.

4 THE COURT: Well, the claims for the  
5 merchandise --

6 MR. FARMER: Uh-huh.

7 THE COURT: -- and services, will those  
8 not go against the victims' fund?

9 MR. FARMER: My understanding is that  
10 the cost of paying those out of that fund would eat up  
11 a substantial portion of the fund, and that the  
12 losses -- and that's one of things that the Attorney  
13 General was going to be investigating -- that the  
14 losses, because the same parties that have a  
15 merchandising claim own a lot, that the benefit to  
16 those people would be equally distributed by placing  
17 that 50,000 in the improvement care trust. That is  
18 what I anticipate the State's position to be.

19 THE COURT: All right.

20 MR. FARMER: And they're here to speak  
21 for themselves.

22 THE COURT: Okay.

23 MR. SHIRLEY: Good morning, your Honor.

24 THE COURT: Good morning.

25 MR. SHIRLEY: I'm Joe Shirley with the

1 Attorney General's office. Mr. Thompson could not be  
2 here today, so I'll be appearing for the State. And as  
3 Mr. Farmer was mentioning, it's the State's  
4 understanding that the Halls community is forming a  
5 not-for-profit corporation and Ms. Paula Flowers is  
6 here today to give you a report on those efforts in  
7 more detail.

8 But the State, first of all, is very  
9 appreciative that the Halls community is willing to  
10 step forward and take this on. And the State intends  
11 to support those efforts and work with the Halls  
12 community to transfer this over and operate it as a  
13 community cemetery. And what the State would propose,  
14 your Honor, is for the State to file a motion and a  
15 memorandum of law that would essentially bring forth a  
16 proposal for resolving this case. And we would request  
17 that your Honor give us 45 days in order to bring that  
18 motion and memorandum of law to you and file it. We'll  
19 do it sooner if we can, but we are investigating some  
20 things, as Mr. Farmer mentioned, about the disposition  
21 of the trust funds.

22 So all those issues about the \$50,000 in  
23 State appropriated funds, the merchandise and services  
24 trust fund, we intend to wrap all those issues into  
25 this motion and memorandum and bring that to you,

1        hopefully setting forth our plan for final resolution  
2        of the case.

3                        THE COURT:    And then will you be sending  
4        copies of this, the proposed motion and memorandum, to  
5        every lot owner and claimant on the merchandise and  
6        services fund?

7                        MR. SHIRLEY:    We can.    If your Honor  
8        feels that's necessary, we can certainly do that.

9                        THE COURT:    I mean, the State will do  
10       that; the Receiver will not have to do that?    Or the  
11       Court?

12                       MR. SHIRLEY:    Yes, your Honor --

13                       THE COURT:    Okay.

14                       MR. SHIRLEY:    -- if you --

15                       THE COURT:    Well, I mean, it's their  
16       money that we're dealing with.    We'd have to --

17                       MR. SHIRLEY:    Right.    I understand that  
18       they would -- may need some notice of this plan for  
19       resolution, so we, the State, will send a copy of that  
20       motion out.

21                       THE COURT:    Okay.    That would be the  
22       motion, the brief, the notice, the notice of hearing?

23                       MR. SHIRLEY:    Yes, your Honor.

24                       THE COURT:    Okay.    Well, before we try  
25       to set that, let's hear from the others.

1 Ms. Flowers?

2 MS. FLOWERS: Good morning, your Honor.

3 THE COURT: Good morning.

4 MS. FLOWERS: I'm Paula Flowers. I  
5 apologize; I've not yet filed a notice of appearance in  
6 this matter. I was just contacted by Ms. Woodall late  
7 last week and have just met with Ms. Woodall and the  
8 Attorney General's office.

9 I will be assisting the Halls community  
10 group on a pro bono basis to assist them in the  
11 establishment of a nonprofit community cemetery  
12 corporation to help them not only get set up but to get  
13 the community cemetery exemption through the Department  
14 of Commerce and Insurance so that they can assist in a  
15 resolution on this matter.

16 The Court is probably familiar with my  
17 role in this matter previously, just as Commissioner of  
18 Commerce and Insurance, but I have served as not only a  
19 Receiver in numerous insurance and securities matters  
20 as Commissioner, but I have served as special counsel  
21 in numerous insurance and securities receiverships.  
22 And so I am familiar with procedures on both common law  
23 and statutory receiverships.

24 Ms. Woodall is here today, and she and I  
25 are working feverishly to get all our ducks in a row

1 with the Secretary of State's office and with Commerce  
2 and Insurance, and so we are coordinating with the  
3 Attorney General's office on the motion they are  
4 preparing, and we will be prepared to file our  
5 paperwork, as well, when they file their motion.

6 And when they come back to see you on  
7 that motion, then the newly formed, chartered, and  
8 approved community cemetery corporation then will be  
9 able to present itself and its role to you in its  
10 entirety. And we will be able to advise you how that  
11 entity will go forward. And hopefully you will never  
12 see that entity in this courtroom in the future.

13 One suggestion that I could offer the  
14 Court on the --

15 THE COURT: Please.

16 MS. FLOWERS: I'm sorry?

17 THE COURT: I said, "Please."

18 MS. FLOWERS: Yes. On the matter of the  
19 notice, on the State's motion, as it will probably be a  
20 rather lengthy motion, one thing that I can tell you  
21 that we have done in other receiverships with such  
22 lengthy motions is we've sent not only the notice of  
23 hearing, but we have sent a letter to claimants when  
24 the list is as long as the one Mr. Farmer has been  
25 wrestling with, that gives them information on how to

1 get a copy of that lengthy pleading. And we've posted  
2 the entire pleading, with all the supporting exhibits,  
3 on the Internet, but also have an address and telephone  
4 number where they can call to get a copy.

5 That would save a great deal of postage.  
6 And that's just one suggestion I offer to you, and it  
7 is a practice we have used in other receiverships --  
8 just as a suggestion.

9 THE COURT: All right.

10 MS. FLOWERS: Do you have any questions  
11 for me, your Honor?

12 THE COURT: You will be ready by the  
13 motion hearing?

14 MS. FLOWERS: Yes, we will.

15 THE COURT: Okay. Sounds good. I have  
16 no other questions. Thank you.

17 Mr. Sellers?

18 MR. SELLERS: Your Honor, obviously, the  
19 bank would have like to have seen the effort with the  
20 cemetery operator that had been contacted come to  
21 fruition, but that didn't happen. So that was our,  
22 probably, last, best effort to realize some sort of  
23 sale proceeds out of the cemetery.

24 At this point, we're just interested in  
25 seeing the proposal that's going to resolve this case,

1     make sure that the costs of the case are handled  
2     somehow in this and are not forgotten, including  
3     expenses that we've advanced to the Receiver on a basis  
4     for hiring the auctioneer and operating this  
5     receivership for the last year or so.

6                     So the bank is still here. The bank is  
7     still interested, obviously. They want to support the  
8     effort to have this cemetery be a community asset  
9     rather than a liability. But we're going to be  
10    involved in the case to the bitter end, whether it  
11    results in any recovery for the bank or not.

12                    THE COURT: All right. For the motion  
13    hearing, how about May 18 or May 19?

14                    MS. FLOWERS: It's the State's motion,  
15    so I defer to Mr. Shirley.

16                    THE COURT: Okay.

17                    MR. SHIRLEY: Either date is acceptable  
18    to the State.

19                    THE COURT: Okay. And the Receiver is  
20    looking.

21                    Mr. Sellers?

22                    MR. SELLERS: Is that another Wednesday?

23                    THE CLERK: That's a Monday or Tuesday.

24                    MR. SELLERS: Monday or Tuesday?

25                    MR. FARMER: Either day is fine with me,

1 your Honor.

2 MR. SELLERS: Either day.

3 THE COURT: All right. Ms. Flowers?

4 MS. FLOWERS: Let's do Tuesday.

5 THE COURT: Okay. All right, and we  
6 will adopt Ms. Flowers' suggestion, if we can put that  
7 down in an order. I'll need that in an order. That's  
8 a good suggestion, but, of course, we -- I think there  
9 should be service of everything pertaining to the  
10 motion made upon the Receiver, the bank, Ms. Flowers,  
11 the State. So if there's any replies or cross-motions  
12 or objections, those should all be served on those  
13 persons and then anyone else requesting service.

14 Okay. Thank you. Welcome aboard,  
15 again, in this capacity.

16 MS. FLOWERS: Thank you. Different  
17 role.

18 (Proceedings ended at 10:14 a.m.)  
19  
20  
21  
22  
23  
24  
25



## C E R T I F I C A T E

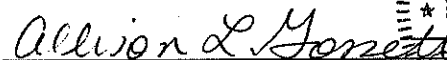
STATE OF TENNESSEE:

COUNTY OF LOUDON:

I, Allison L. Gossett, Court Reporter and Notary Public, do hereby certify that I reported in machine shorthand the foregoing proceedings; that the foregoing pages, numbered 1 to 14, inclusive, were typed by me using computer-aided transcription and constitute a true and accurate record of said proceedings.

I further certify that I am not an attorney or counsel of any attorney or counsel connected with the action, nor financially interested in the action.

Witness my hand and official seal this the 12th day of March, 2009.



Allison L. Gossett

Court Reporter

And Notary Public at Large.

My Commission Expires: 7/14/11

